



COMMONWEALTH OF KENTUCKY
JUDICIAL ETHICS COMMITTEE
ADMINISTRATIVE OFFICE OF THE COURTS

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FRANKFORT, KENTUCKY 40601

JOHN P. HAYES
Court of Appeals

THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
Circuit Court

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JUDICIAL ETHICS OPINION JE-11

Informal

QUESTION: May a district judge serve as executor of the estate of a deceased uncle?

ANSWER: Qualified yes.

REFERENCE: SCR 4.300, Canon 5D

OPINION: (August 1980):

Canon 5D reads as follows:

- D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. . . .

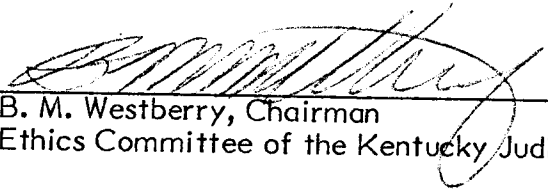
Since uncles are not listed in the Canon among those for whom a judge may serve as a fiduciary, it becomes a question of fact in each case whether the judge has maintained "a close familial relationship" with the person in question. The Canon seems to contemplate the inclusion of more than the judge's immediate family within the permissible group, for it lists parents, grandparents and grandchildren as well as persons who typically form the immediate family. The Canon provides no other guidelines, and therefore the judge must satisfy himself that there was a close familial tie between himself and the person involved.

If, for instance, the uncle stood more or less in loco parentis during the judge's childhood or adolescence, or if there was a close bond of friendship between them, or if the person is regarded as a member of the judge's extended family, it would surely be "a close familial relationship," and the judge could act as a fiduciary. If, on the other hand, the judge regards the relationship as less than a close familial one, he should refuse to serve.

If the judge decides to accept the appointment, he must be sure that it will not interfere with the proper performance of his judicial duties. If it is a large, complex estate which is likely to consume much time, the judge would be well advised to refuse appointment.

Moreover, there are two limitations spelled out in subsections (1) and (2) of Canon 5D. These subsections are self-explanatory and are set out here for ease of reference:

- (1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.
- (2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary